

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition No.:** 49-574-13-1-5-20516-15  
**Petitioner:** Kolby J. McKinney  
**Respondent:** Marion County Assessor  
**Parcel No.:** 5026217  
**Assessment Year:** 2013

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. The Petitioner initiated his 2013 assessment appeal by filing a Taxpayer's Notice to Initiate an Appeal (Form 130) with the Marion County Assessor.<sup>1</sup>
2. The Marion County Property Tax Assessment Board of Appeals (PTABOA) issued its final determination on November 20, 2015, lowering the assessment but not to the amount requested by the Petitioner.
3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board on December 30, 2015.
4. The Board issued a notice of hearing on March 9, 2017.
5. Administrative Law Judge (ALJ) Patti Kindler was scheduled to hold the Board's hearing on April 18, 2017, at 10:30 a.m. in the Indiana Government Center South (Conference Room 6) located at 302 West Washington Street in Indianapolis. The Petitioner was present and ready to proceed with the hearing. The Respondent failed to appear.
6. The ALJ verified that the notice of hearing was not returned as undeliverable and verified the Respondent had not contacted the Board. After waiting approximately 20 minutes past the scheduled hearing time, the ALJ proceeded with the hearing as scheduled with the Petitioner present. The ALJ did not inspect the subject property. Kolby J. McKinney appeared *pro se* and was sworn as a witness.

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<sup>1</sup> The Form 130 is "hand-dated" by the Petitioner on December 29, 2015. The PTABOA's Notification of Final Determination (Form 115) was issued on November 20, 2015. Because a Petitioner must request a "conference" with the assessor prior to the PTABOA's hearing, the Board can only assume the Petitioner actually initiated his appeal in a timely manner prior to the PTABOA issuing its determination.

## **Facts**

7. The property under appeal is a single-family residence located at 3649 Carson Avenue in Indianapolis.
8. The PTABOA determined a 2013 total assessment of \$74,300 (land \$14,300 and improvements \$60,000).
9. At the hearing, the Petitioner requested a total assessment of \$29,200.

## **Record**

10. The official record for this matter is made up of the following:
  - a. Form 131 with attachments,
  - b. A digital recording of the hearing,
  - c. Exhibits:
    - Petitioner Exhibit A: Exhibit cover sheet attached to a the Board's notice of hearing, date-stamped by the Board on April 3, 2017,
    - Petitioner Exhibit 1: Copy of the tax deed,
    - Petitioner Exhibit 2: Notice of refund for the 2015 assessment appeal from the Marion County Auditor, dated November 28, 2016,
    - Petitioner Exhibit 3: Page 1 from the 2015 Joint Report by Taxpayer/Assessor to the County Board of Appeals of a Preliminary Informal Meeting (Form 134) indicating the total assessment should be reduced from \$68,500 to \$29,200,
    - Petitioner Exhibit 4: Page 2 from the 2015 Form 134,
    - Petitioner Exhibit 5: 2011 Marion County Tax Sale Certificate for the subject property dated September 22, 2011,
    - Petitioner Exhibit 6: Page 1 from the Form 130,
    - Petitioner Exhibit 7: Page 2 from the Form 130,
    - Petitioner Exhibit 8: Page 1 from the Form 131,
    - Petitioner Exhibit 9: Page 2 from the Form 131,
    - Petitioner Exhibit 10: Page 1 from the Form 115,
    - Petitioner Exhibit 11: Page 2 from the Form 115,
    - Petitioner Exhibit 12: Special Message to Property Owner (Form 53569) for the for the 2013-pay-2014 year,
    - Petitioner Exhibit 13: Form 53569 for the 2014-pay-2015 year,
    - Petitioner Exhibit 14: Nine interior and exterior photographs of the subject property,
    - Petitioner Exhibit 15: Nine exterior photographs of the subject property,

Petitioner Exhibit 16: Nine interior photographs of the subject property,  
Petitioner Exhibit 17: Nine exterior photographs of the subject property,  
Petitioner Exhibit 18: Various exterior photographs of the boarded up detached garage and debris in the yard.

Board Exhibit A: Form 131 with attachments,  
Board Exhibit B: Notice of hearing dated March 9, 2017,  
Board Exhibit C: Hearing sign-in sheet,  
Board Exhibit D: Proof of mailing dated March 9, 2017.

d. These Findings and Conclusions.

### **Summary of the Parties' Contentions**

11. The subject property's assessment is excessive. The Petitioner purchased the property "unseen" at a tax sale on September 22, 2011, for \$10,000. A tax deed was issued and he was granted access on February 7, 2013. *McKinney testimony; Pet'r Ex. 1, 5.*
12. After access was granted, the Petitioner discovered the property was in "extremely poor condition." The Petitioner presented several undated photographs of the property indicating both the interior and exterior condition. The furnace, ductwork, water heater, copper piping, gutters, wiring, and aluminum siding "were taken" from the home and garage. The kitchen cabinets, bathroom sink, toilet, and plumbing were also missing. The front windows and rear door "were stolen" and ultimately the home had to be "boarded up." The asphalt on the detached garage's roof was in bad shape resulting in leaking and eventually the ceiling "caved in." The interior walls were covered in "some stuff" and trash was strewn about the lawn. Large shrubs and trees had "taken over" the yard and required removal with a "Bobcat." *McKinney testimony; Pet'r Ex. 14, 15, 16, 17, 18.*
13. After the Petitioner filed his 2015 appeal with the county, the county "physically inspected" the property and ultimately lowered the 2015 total assessment to \$29,200. According to the Petitioner, the property was in "even worse shape" in 2013 as repairs had been made prior to the county inspecting the property in 2015. The 2013 total assessment should mirror the 2015 total assessment. *McKinney testimony; Pet'r Ex. 2, 3, 4.*

### **Burden of Proof**

14. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1233 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.

15. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
16. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
17. Here, the Petitioner failed to offer the subject property record card or any other evidence indicating how the property was assessed in 2012. However, according to the Form 131 and the Form 53569, the property’s 2012 total assessment was \$73,200. The 2013 total assessment is \$74,300. According to these documents, the property’s total assessment increased less than 2% from 2012 to 2013. The Petitioner did not offer any argument that the burden should shift to the Respondent. For these reasons, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply and the Petitioner has the burden of proof in this appeal.

### **Analysis**

18. The Petitioner made a prima facie case that the 2013 assessment should be reduced.
  - a. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

- b. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2013 assessment, the valuation date was March 1, 2013. *See* Ind. Code § 6-1.1-4-4.5(f).
- c. Here, the undisputed evidence indicates the Petitioner purchased the subject property at a tax sale on September 22, 2011, for \$10,000. However, the tax sale purchase is too far removed from the relevant valuation date of March 1, 2013, to be probative. Furthermore, even if the date of the tax sale was close enough to the relevant valuation date, the Petitioner failed to provide any indication that the tax sale was representative of the property's market value-in-use.
- d. With that being said, the Petitioner also provided several undated photographs and testimony regarding the property's condition. While the photographs and testimony establish that the property is probably not worth \$74,300, they do not by themselves, precisely prove a more accurate value. However, the Petitioner also testified that the Respondent inspected the property in 2015 and consequently lowered the 2015 total assessment to \$29,200. The Petitioner went on to testify that the property was in "even worse shape" in 2013 than it was in 2015. Thus, based on the entirety of the Petitioner's case, all of which is undisputed, the Petitioner has made a prima facie case, albeit just barely, that the subject property's 2013 total assessment should be no more than \$29,200.
- e. As previously stated, the Respondent failed to appear at the hearing and failed to provide any evidence to rebut the Petitioner's case, or any evidence in support of the current assessment. The Board bases its decision on the evidence presented and the issues raised during the hearing and will not make a case for Respondent. *See Whitley Products, Inc. v. State Bd. Of Tax Comm'rs*, 704 N.E.2d 1113, 1118-1119 (Ind. Tax Ct. 1998). Each case stands on its own merit, and based on the unique facts of this case, the Board finds that the 2013 total assessment should be reduced to \$29,200.

### **Conclusion**

- 19. The Board finds for the Petitioner.

## Final Determination

In accordance with the above findings of fact and conclusions of law, the 2013 assessment must be reduced to \$29,200.

ISSUED: July 14, 2017

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

### - APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.